

**Amendment and Response**

Applicant: Don R. James Jr. et al.

Serial No.: 10/812,220

Filed: March 29, 2004

Docket No.: 200313892-1

Title: SYSTEMS AND METHODS FOR CONTROLLING PROGRAM INSTALLATION ON A COMPUTING DEVICE

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**REMARKS**

The following remarks are made in response to the Non-Final Office Action mailed February 5, 2009, in which claims 1-7, 15-17, 19-22, and 24-27 were rejected. With this Response, claim 15 has been amended to correct an informality. Claims 1-7, 15-17, 19-22, and 24-27, therefore, remain pending in the application and are presented for reconsideration and allowance.

**Claim Rejections under 35 U.S.C. § 103**

The Examiner rejected claims 1, 3-5, 20, 21, 24, 25, and 27 under 35 U.S.C. § 103(a) as being unpatentable over Mullen et al., U.S. Publication No. 2004/0243997 ("Mullen"), in view of Deshpande et al., U.S. Publication No. 2003/0218628 ("Deshpande").

Applicants submit that Mullen and Deshpande, either alone, or in combination, fail to teach or suggest the limitations recited by independent claim 1 including **an installer program that executes on the computing device determining the type of an original operating system currently installed on the computing device; the installer program that executes on the computing device determining the type of a new operating system that a user is attempting to install on the computing device to replace the original operating system from information stored within a software package that comprises the new program operating system; the installer program that executes on the computing device comparing on the computing device the types of the original and new operating systems to determine whether installation of the new operating system is authorized; and the installer program that executes on the computing device preventing installation of the new operating system if the types are not the same.**

**Mullen** discloses a computer including a first operating system installed in a first file directory. A second file directory is created and an operating system image is copied to the second file directory to provide a second operating system installed on the computer. Configuration setting information is processed to determine configuration settings for the first operating system in the first file directory. The determined configuration settings is copied from the first file directory to configuration settings in the second file directory, wherein the second operating system uses the configuration settings copied to the second file directory.

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(Para. [0006]).

**Deshpande** discloses a mechanism for installing a patch of an electronic device utilizing a graphical user interface. A software wizard programmatically pre-verifies the patch dependencies (pre-installed software) required by the software patch and checks the target device to ensure that the target device possesses the requisite software. The installation of the software patch is performed once all the required software is present on an appropriate target device. (Para. [0004]).

The Examiner submits that *determining the type of an original operating system currently installed on the computing device* as recited by claim 1 is disclosed by Mullen at paragraph [0028]. (Office Action, page 2). Mullen discloses that the installation program 52 processes (at block 156) the application/OS configuration list 56 to determine the operating system configuration settings 6a, 6b . . . 6c to copy from the preexisting operating system configuration settings 106 to the installed operating system configuration settings 126. (Para. [0028]). The configuration settings disclosed by Mullen do not include the *type* of the preexisting operating system. Rather, the configuration settings are merely copied from the preexisting operating system for use with the installed operating system in Mullen.

The Examiner submits that *determining the type of a new operating system that a user is attempting to install* as recited by claim 1 is disclosed by Mullen at paragraph [0009]. (Office Action, page 3). The application configuration settings disclosed by Mullen do not include the *type* of an *operating system*. The application configuration settings are not even related to an *operating system*; rather they are configuration settings for an application program that executes with the second operating system. (Para. [0009]).

The Examiner submits that *the installer program that executes on the computing device comparing on the computing device the types of the original and new operating systems to determine whether installation of the new operating system is authorized* as recited by claim 1 is disclosed by Deshpande at paragraph [0028]. (Office Action, page 3). Deshpande discloses that the patch module 10 queries the target device 20 (step 102) and retrieves attributes necessary for the installation process (step 104). A determination is made as to whether the device is validated by comparing the retrieved attributes required for the installation of the software patch 15, 16, and 17 (step 106). If the comparison of the

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attributes indicates that the target device 20 meets the required validation parameters (step 106), the patch module proceeds to a dependency check for the selected software patch (step 108). (Para. [0028], emphasis added). Clearly, Deshpande discloses that patch module 10 and not target device 20 performs the comparison rather than the comparison being performed by *the installer program that executes on the computing device* as recited by claim 1.

The Examiner submits that *the installer program that executes on the computing device preventing installation of the new operating system if the types are not the same* as recited by claim 1 is disclosed by Deshpande at paragraph [0028]. (Office Action, page 4). Deshpande discloses that if the comparison (performed by patch module 10) of the attributes reveals that the attributes are not acceptable (step 106) the device is not validated and an appropriate error message detailing the cause of the validation failure is displayed to the user 2 (step 110). (Para. [0028]). User 2 accesses a client device 4 which is interfaced with a server 8. The server 8 includes a network management tool 9. The network management tool 9 includes patch module 10. (Para. [0017]). Therefore, Deshpande discloses that patch module 10 and not target device 20 prevents the installation rather than the installation being prevented by *the installer program that executes on the computing device* as recited by claim 1.

In view of the above, Applicants submit that the above rejection of independent claim 1 under 35 U.S.C. § 103(a) should be withdrawn. Dependent claims 3-5 and 25 further define patentably distinct independent claim 1. Accordingly, Applicants believe that these dependent claims are also allowable over the cited references. Allowance of claims 1, 3-5, and 25 is respectfully requested.

For similar reasons as discussed above with reference to independent claim 1, Applicants submit that Mullen and Deshpande, either alone, or in combination, also fail to teach or suggest the limitations recited by independent claim 20 including **memory comprising an installer program configured to (i) determine the type of the previously-installed operating system from the information of the management interface, (ii) determine the type of a new operating system with which a user is attempting to replace the previously-installed operating system from information stored within a software**

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**package that contains the new operating system, (iii) compare the types of the new and previously-installed operating systems and determine that installation of the new operating system is not authorized if the types of the new and previously-installed operating systems are not the same, and (iv) prevent installation of the new operating system if it is determined that installation is not authorized.**

In view of the above, Applicants submit that the above rejection of independent claim 20 under 35 U.S.C. § 103(a) should be withdrawn. Dependent claims 21, 24, and 27 further define patentably distinct independent claim 20. Accordingly, Applicants believe that these dependent claims are also allowable over the cited references. Allowance of claims 20, 21, 24, and 27 is respectfully requested.

The Examiner rejected claim 2 under 35 U.S.C. § 103(a) as being unpatentable over Mullen in view of Deshpande, and further view of Herrick, U.S. Publication No. 2004/0181790 ("Herrick").

Dependent claim 2 further defines patentably distinct independent claim 1. Accordingly, Applicants believe that this dependent claim is also allowable over the cited references. Allowance of claim 2 is respectfully requested.

The Examiner rejected claim 6 under 35 U.S.C. § 103(a) as being unpatentable over Mullen in view of Deshpande, and further view of Delgado et al., U.S. Publication No. 2005/0066324 ("Delgado") and Ahuja, U.S. Patent No. 6,122,732 ("Ahuja").

Dependent claim 6 further defines patentably distinct independent claim 1. Accordingly, Applicants believe that this dependent claim is also allowable over the cited references. Allowance of claim 6 is respectfully requested.

The Examiner rejected claim 7 under 35 U.S.C. § 103(a) as being unpatentable over Mullen in view of Deshpande, and further in view of Kadam et al., U.S. Publication No. 2003/0079126 ("Kadam").

Dependent claim 7 further defines patentably distinct independent claim 1. Accordingly, Applicants believe that this dependent claim is also allowable over the cited references. Allowance of claim 7 is respectfully requested.

The Examiner rejected claims 15 and 19 under 35 U.S.C. § 103(a) as being unpatentable over Herrick in view of Deshpande.

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Applicants that submit that Herrick And Deshpande, either alone, or in combination, fail to teach or suggest the limitations recited by independent claim 15 including **logic configured to execute on a user computer and determine on the user computer the type of an existing operating system installed on the user computer; logic configured to execute on the user computer and determine on the user computer the type of a new operating system that has been downloaded to the user computer; logic configured to execute on the user computer and compare on the user computer the types of the new and existing operating systems; logic configured to execute on the user computer and to determine that installation of the new operating system is not authorized when the types are not the same; and logic configured to execute on the user computer and prevent installation of the new operating system when it is determined that installation is not authorized.**

Herrick discloses that the target computer may have an executable program thereon for automatically determining the currency of software installed on the target computer, comparing the currency of the installed software to a desired configuration list stored on the administrative computer, and obtaining installation software from a library server including necessary updates, upgrades and patches for installation on the target computer. (Para. [0009]).

The Examiner submits that *logic configured to execute on a user computer and determine on the user computer the type of an existing operating system installed on the user computer* as recited by claim 15 is disclosed by Herrick at paragraph [0009]. (Office Action, page 11). The currency of the software installed as disclosed by Herrick does not disclose the *type* of an *operating system*. The currency merely provides the version or configuration, and not the *type*, of the software installed. (Para. [0026]).

The Examiner submits that *logic configured to execute on the user computer and determine on the user computer the type of a new operating system that has been downloaded to the user computer* as recited by claim 15 is disclosed by Herrick at paragraph [0056]. (Office Action, page 11). Herrick merely discloses comparing versions of software packages using a build list. (Para. [0056]). Herrick does not disclose comparing *types* of software packages. Further, the build list disclosed by Herrick is not *a new operating system that has*

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*been downloaded to the user computer.* The build list contains information defining the desired version 304 for a given software package 302. (Para. [0036]; and Fig. 3). In Herrick, the software to be installed is not downloaded until after the comparison using the build list is completed. (Para. [0057]).

The Examiner submits that *logic configured to execute on the user computer and compare on the user computer the types of the new and existing operating systems* as recited by claim 15 is disclosed by Herrick at paragraph [0009]. (Office Action, page 11). The currency of the software installed as disclosed by Herrick does not disclose the *type* of an *operating system*. The currency merely provides the version or configuration, and not the *type*, of the software installed. (Para. [0026]).

The Examiner submits that *logic configured execute on the user computer and to determine that installation of the new operating system is not authorized when the types are not the same; and logic configured to execute on the user computer and prevent installation of the new operating system when it is determined that installation is not authorized* as recited by claim 15 is disclosed by Deshpande at paragraph [0028]. (Office Action, page 12). Deshpande discloses that the patch module 10 queries the target device 20 (step 102) and retrieves attributes necessary for the installation process (step 104). A determination is made as to whether the device is validated by comparing the retrieved attributes required for the installation of the software patch 15, 16, and 17 (step 106). If the comparison of the attributes indicates that the target device 20 meets the required validation parameters (step 106), the patch module proceeds to a dependency check for the selected software patch (step 108). (Para. [0028], emphasis added). Clearly, Deshpande discloses that patch module 10 and not target device 20 determines the installation is not authorized rather than the determination being performed by *logic configured to execute on the user computer* as recited by claim 15.

Further, Deshpande discloses that if the comparison (performed by patch module 10) of the attributes reveals that the attributes are not acceptable (step 106) the device is not validated and an appropriate error message detailing the cause of the validation failure is displayed to the user 2 (step 110). (Para. [0028]). User 2 accesses a client device 4 which is interfaced with a server 8. The server 8 includes a network management tool 9. The network

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management tool 9 includes patch module 10. (Para. [0017]). Therefore, Deshpande discloses that patch module 10 and not target device 20 prevents the installation rather than the installation being prevented by *logic configured to execute on the user computer* as recited by claim 15.

In view of the above, Applicants submit that the above rejection of independent claim 15 under 35 U.S.C. § 103(a) should be withdrawn. Dependent claim 19 further defines patentably distinct independent claim 15. Accordingly, Applicants believe that this dependent claim is also allowable over the cited references. Allowance of claims 15 and 19 is respectfully requested.

The Examiner rejected claims 16 and 26 under 35 U.S.C. § 103(a) as being unpatentable over Herrick in view of Deshpande, and further in view of Mullen.

Dependent claims 16 and 26 further define patentably distinct independent claim 15. Accordingly, Applicants believe that these dependent claims are also allowable over the cited references. Allowance of claims 16 and 26 is respectfully requested.

The Examiner rejected claim 17 under 35 U.S.C. § 103(a) as being unpatentable over Herrick in view of Deshpande, and further view of Kadam.

Dependent claim 17 further defines patentably distinct independent claim 15. Accordingly, Applicants believe that this dependent claim is also allowable over the cited references. Allowance of claim 17 is respectfully requested.

The Examiner rejected claim 22 under 35 U.S.C. § 103(a) as being unpatentable over Mullen in view of Deshpande, and further in view of Delgado and Ahuja.

Dependent claim 22 further defines patentably distinct independent claim 20. Accordingly, Applicants believe that this dependent claim is also allowable over the cited references. Allowance of claim 22 is respectfully requested.

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**CONCLUSION**

In view of the above, Applicant respectfully submits that pending claims 1-7, 15-17, 19-22, and 24-27 are all in a condition for allowance and requests reconsideration of the application and allowance of all pending claims.

Any inquiry regarding this Amendment and Response should be directed to either Mike Czarnecki at Telephone No. (281) 518-1527, Facsimile No. (281) 514-8332 or Mark A. Peterson at Telephone No. (612) 573-0120, Facsimile No. (612) 573-2005. In addition, all correspondence should continue to be directed to the following address:

IP Administration  
Legal Department, M/S 35  
HEWLETT-PACKARD COMPANY  
P.O. Box 272400  
Fort Collins, Colorado 80527-2400


Respectfully submitted,

Don R. James Jr. et al.,

By,

DICKE, BILLIG & CZAJA, PLLC  
Fifth Street Towers, Suite 2250  
100 South Fifth Street  
Minneapolis, MN 55402  
Telephone: (612) 573-0120  
Facsimile: (612) 573-2005

Date: 4-15-2009  
MAP:kmh

  
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Mark A. Peterson  
Reg. No.50,485